

JAMES J. BERGMANN, ESQ., SBN 220447  
The Law Office of Donald F. Seth  
290 B Street, Suite 205  
Santa Rosa, CA 95401  
(707) 545-6370 telephone  
(707) 545-9770 fax  
jimbergmann@hotmail.com

Attorneys for Plaintiff  
ENID G. RICKLEY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ENID G. RICKLEY,

Plaintiff,

v.

NCA FINANCIAL SERVICES, INC.,  
NATIONAL CREDIT ACCEPTANCE, and  
DOES 1 through 10, inclusive,

Defendants.

**CASE NO. C 09-00296 MEJ**

**CASE MANAGEMENT  
STATEMENT**

**AND ORDER THEREON**

**Date: July 16, 2009**

**Time: 10:00 a.m.**

**Courtroom: B, 15<sup>th</sup> Floor**

**Honorable Maria-Elena James**

Defendants have not participated in preparing this Case Management Statement; it was prepared by Plaintiff ENID G. RICKLEY alone. Both named Defendants, NCA FINANCIAL SERVICES, INC. ("NCA") and NATIONAL CREDIT ACCEPTANCE ("NATIONAL") have filed for bankruptcy protection in the United States Bankruptcy Court, Eastern District of California, Sacramento Division. True and correct copies of these two Defendants' "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, and Deadlines" is attached hereto as Exhibits A and B.

NCA filed its bankruptcy case, Case No. 09-31129-A-7, on June 1, 2009; NATIONAL filed its bankruptcy case, Case No. 09-31658-C-7, on June 9, 2009. NCA was

1 served with this action on May 13, 2009, and NATIONAL was served on May 31, 2009. A  
 2 Meeting of Creditors has been set in each case: NCA's is set for July 13, 2009 at 8:00 a.m.;  
 3 NATIONAL's is set for July 17, 2009 at 1:00 p.m. Both defendants are represented in their  
 4 bankruptcy proceedings by the same attorney:

5 **John M. O'Donnell, Esq.**  
 6 **915 University Ave.**  
**Sacramento, CA 95825**  
**(916)563-7744**

7 Plaintiff's attorney plans to attend the July 13, 2009 Meeting of Creditors, and will  
 8 inform the Court of any relevant information after the Meeting. Since an automatic stay has  
 9 been entered as to both Defendants, Plaintiff has prepared this Case Management Statement  
 10 without participation from Defendants.

11 **No Proof of Claim yet filed:** Plaintiff has not filed a Proof of Claim with the  
 12 Bankruptcy Court as to either Defendant. The Bankruptcy Notices state that there does not  
 13 appear to be any property available to the trustee to pay creditors. Plaintiff may file Proof(s) of  
 14 Claim at a later date.

15 1. **Jurisdiction and Service:** This Court has jurisdiction under the provisions of 15  
 16 U.S.C. §1692k(d) and 28 U.S.C. §1367. Both defendants have been served, but plaintiff's  
 17 counsel has not yet been contacted by defense counsel for either defendant. No issues regarding  
 18 personal jurisdiction or venue are anticipated by Plaintiff.

19 2. **Facts:** In January, 2008, Defendants began telephoning Plaintiff at work, on her cell  
 20 phone, and at home, in an attempt to collect a debt they claimed she owed. Plaintiff alleges that  
 21 Defendants violated the federal Fair Debt Collection Practices Act ("FDCPA") and California's  
 22 Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act") in attempting to collect this  
 23 debt, in the following ways: (a) Defendants told Plaintiff's supervisor that they were going to  
 24 send a sheriff to garnish plaintiff's wages, when in fact they had no legal right to do so; (b)  
 25 Defendants falsely told Plaintiff that they could garnish her security deposit from her landlord,  
 26  
 27

1 and that they could draw funds from her credit cards to pay the debt; (c) Defendants told  
2 Plaintiff that they had a “court order” against Plaintiff, when in fact they did not; (d) Defendants  
3 continued calling and sending letters to Plaintiff after they received her written request to cease  
4 all communication with her; and (e) Defendants failed to send Plaintiff a “validation notice”  
5 within five days of their first communication with her.

6 3. Legal Issues: Whether Defendants’ acts and omissions violated the FDCPA and  
7 Rosenthal Act.

8 4. Motions: Plaintiff may request entry of default, and may move for default judgments  
9 as to both defendants, depending on the status of the Bankruptcy Court's automatic stay.

10 5. Amendment of Pleadings: Depending on what Plaintiff's counsel finds out at the  
11 Meeting of Creditors on July 13, 2009, Plaintiff may seek leave to amend her Complaint in  
12 order to add other defendants.

13 6. through 9. These are not relevant since there is an automatic stay preventing  
14 litigation.

15 10. Related Cases: *In re NCA Financial Services, Inc.*, Bankr. E.D. Cal., Case No. 09-  
16 31129-A-7; and *In re National Credit Acceptance*, Bankr. E.D. Cal., Case No. 09-31658-C-7.

17 11. Relief: Plaintiff seeks actual and statutory damages as allowed under 15 U.S.C.  
18 §1692k and California Civil Code §1788.30.

19 12. Settlement and ADR: Plaintiff is amenable to ADR and will discuss ADR methods  
20 with Defendants after they appear, if the bankruptcy stay is lifted or if litigation is otherwise  
21 resumed.

22 13. Consent to Magistrate Judge: It is unknown at this time whether all parties will  
23 consent to proceed with a Magistrate Judge.

24 14. Other References: Plaintiff does not consent to binding arbitration, but may be  
25 amenable to referral by the Court to some other program.

26 15. Narrowing of Issues: None at this time.

1 16. Expedited Schedule: Unknown at this time.

2 17. Scheduling: Plaintiff is amenable to working with the Court to set a schedule for  
3 this case.

4 18. Trial: The following is dependant on the status of the Bankruptcy proceedings, and  
5 whether or not Plaintiff will amend in additional defendants: Plaintiff requests a jury trial. It is  
6 estimated that a trial in this matter will take three to six full court days.

7 19. Disclosure of Non-Party Interested Entities or Persons: No party has yet filed a  
8 disclosure of non-party interested entities or persons. The Bankruptcy Trustees in the pending  
9 bankruptcy proceedings may have a financial interest. The Trustees are:

10 *In re NCA Financial Services, Inc.*, Bankr. E.D. Cal., Case No. 09-31129-A-7

11 Hank Spacone  
12 P.O. Box 255808  
Sacramento, CA 95865  
(916)485-5530

13 *In re National Credit Acceptance*, Bankr. E.D. Cal., Case No. 09-31658-C-7

14 Prem N. Dhawan  
15 P.O. Box 965  
Benicia, CA 94510  
16 (707)361-4264

17 20. Other Matters: None known.

18 Dated: July 9, 2009

/s/ James J. Bergmann  
JAMES J. BERGMANN.  
Law Office of Donald F. Seth  
Attorneys for Plaintiff ENID G. RICKLEY

20  
21 The CMC is hereby CONTINUED to October 8, 2009 at 10:00 a.m. in Courtroom B.  
22 Whenever such information becomes available, Plaintiff shall update the Court as to any  
23 automatic bankruptcy stay for both defendants. If no bankruptcy stay notice has been filed  
prior to the CMC, the parties shall file a joint statement by October 1, 2009.

24 Dated: July 10, 2009

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28 CASE MANAGEMENT STATEMENT  
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